IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5960 of 1999

with

SPECIAL CIVIL APPLICATION No 5961 of 1999

with

SPECIAL CIVIL APPLICATION NO. 3435 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LEGAL HEIRS OF DEC GOVIND BHIKHABHAI DEVALIA

Versus

EXECUTIVE ENGINEER (CONTST)

Appearance:

1. Special Civil Application No. 5960 of 1999
   Mr. A.M. Mehta [MR AT TAKHTANI] for Petitioner No. 1
   MR AM MEHTA for Petitioners No. 1-1/2-1/2
   MS SEJAL K MANDAVIA for Respondent No. 1
2. Special Civil Application No. 5961 of 1999
   Mr. A.M.Mehta [MR AT TAKHTANI] for Petitioner No. 1
   MS SEJAL K MANDAVIA for Respondent No. 1

3. Special Civil Application No. 3435 of 1999 :

Ms. Sejal K. Mandavia for petitioner.
Mr. A.M. Mehta for respondent workman.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 21/03/2002

ORAL JUDGEMENT

Heard learned advocate Mr. A.M. Mehta for the petitioners in special civil application No. 5960 of 199, 5961 of 1999 and for the respondent workman in special civil application no. 3435 of 1999 and Ms. S.K. Mandavia for the Board in these three petitions. Very same award is under challenge in these three petitions. In these petitions, rule has been issued in these three petitions on 28th February, 2001 and interim relief was refused. The workmen have challenged the award made by the labour court in reference no. 520 of 1984 and 521 of 1984 newly numbered as Reference (LCJ) No. 157 of 1990 and 158 of 1990 dated 11th December, 1998 wherein the labour court has granted reinstatement to the workman Narsi Tapu without back wages with continuity of service and the another workman Govind Bhikha has died during the pendency of the proceedings and, therefore, the labour court has awarded compensation of Rs. 10,000.00 to the heirs and legal representatives of the said deceased workman plus cost of Rs.500.00 has been awarded by the labour court to the workmen. Very same award has been challenged by the employer board by filing special civil application no. 3435 of 1999.

During the course of hearing, learned advocate Mr. Mehta has submitted that the workmen were in service for a period of more than six years and their services were illegally terminated on 11th August, 1983 without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947 and, therefore, industrial dispute was raised by the workmen wherein reference was made to the labour court Rajkot which references were subsequently transferred to Labour Court, Jamnagar and were renumbered as aforesaid. The labour court has examined the matter and has directed reinstatement of one workman without back wages and has awarded compensation to the heirs and legal representatives of the deceased workman Govind Bhikha. He has submitted that once it is found by the labour court that the termination is illegal and retrenchment is contrary to the provisions of section 25-F of the Industrial Disputes Act, 1947 and as a consequence thereof, workman becomes entitled for

reinstatement with full back wages. However, inspite of this position, the labour court has, in one case, granted reinstatement without back wages and in other case, has granted Rs.10,000/- to the heirs and legal representatives of the deceased workman Shri Govind Bhikha. Learned advocate Mr. Mehta has submitted that once the termination has been found to be illegal and retrenchment is contrary to section 25-F of the Industrial Disputes Act, 1947, then, the workmen are entitled for full back wages for the interim period as a normal rule.However, the labour court has denied the same and, therefore, the labour court has committed error in passing such order which would require interference of this court.

On the other hand, learned advocate Ms. Mandavia appearing for the employer in these petitions has submitted that the labour court has committed error in granting reinstatement in favour of the person who has been appointed on temporary basis and as an adhoc employee on the basis of the availability of the work. She has submitted that the workmen concerned were not completing 240 days continuous service in any calendar year and, therefore, provisions of section 25F were not at all applicable or attracted to the facts of the present case and, therefore, labour court ought not to have made award of reinstatement. She has submitted that the labour court has not examined that issue after considering Exh. 30 and 31 as to whether any of the workmen has completed 240 days continuous service or not and has without examining that aspect of the matter and without recording any aspect to that effect, has made the award of reinstatement and, therefore, the award of the labour court granting reinstatement is erroneous and bad in law and, therefore, required to be interfered with by this Court.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award made by the labour court. The submissions made by Ms. Mandavia are correct to the effect that there is no finding recorded by the labour court that the workman concerned has completed 240 days continuous service. Exh. 30 and 31 were very much before the labour court. However that has not been considered by the labour court. I have considered Exh.30 and 31. Exh. 30 is relating to the workman Govind Bhikha, since the deceased and Exh.3 1 is relating to another workman Narshi Tapu. Considering the date of termination in the month of August, 1983, if preceding 12 months are considered for calculating 240 days,then, in case of the workman Govind Bhikha, 215 days

have been completed and if the effect of holidays of 12 months period is considered in light of the principles laid down by the apex court in case of American Express Company reported in AIR 1986 SC page 458 , then, while calculating 240 days continuous service, weekly off, all holidays etc. are required to be included for considering 240 days continuous service. Relevant observations made by the apex court in case of WOrkmen of American Express International Banking Corporation (supra), in para 5,6 are reproduced as under:

"The qualification for relief under S.25-F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in Sec. 25B of the Act. In view of sub-s.(2) of S.25-B, the workman shall be deemed to be in continuous service if he has actually worked under the employer' for particular period. The expression "actually worked under the employer" cannot mean those days only when the workman worked with hammer, strike or pen but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service by compulsion of statute,standing orders etc. Thus, Sundays and other paid holidays should be taken into account for the purpose of reconing the total number of days onwhichthe workman could be said to have actually worked. AIR 1981 SC 852, Disting."

Therefore, in case of deceased Govind Bhikha, if weekly off and holidays are included, he would become entitled for protection of section 25F of the Industrial Disputes Act, 1947. In case of Narsi Bhikha also, considering Exh. 31 and considering the date of termination and last 12 months preceding the date of termination, from the record it is clearly established that he is also completing 240 days continuous service though there are no clear finding to that effect in the award in question. However, upon perusal of Exh. 30 and 31 and in light of the observations made by the apex court in case of American Express Company (supra), order of termination have rightly been held to be invalid which does not require any interference of this court and that direction shall remain in tact. At the time of termination of service, junior to the workman concerned

were retained in service and that fact has been admitted by the witness for the employer Shri Jentilal R. Patel at Exh. 29 wherein he has admitted in cross examination, para 7, that it is true that at the time of termination, persons junior to the workman concerned were retained in service and considering this aspect of the matter, there is violation of the provisions of section 25-G of the Industrial Disputes Act, 1947. On both the grounds, the termination is considered to be illegal and bad in law. The labour court was, therefore, right in considering that the termination is illegal. There is no error committed by the labour court either in granting reinstatement without back wages to one of the workman and in granting compensation to the heirs and legal representatives of the deceased workman Govind Bhikha.

However, learned advocate Mr. Mehta has submitted that once the termination has been found illegal, then, the workmen are entitled for back wages as a normal rule for the intervening period. Since the labour court has found that the termination was illegal, it ought to have granted back wages for the intervening period. However, according to my opinion, looking to the nature of work performed by the workmen, they were working at the port. No evidence has been produced by the workman to show that the efforts were made for securing the job and other family members of the family of the workmen are earning sufficiently and also considering reasonable presumption that the workman would not remain unemployed for such a long period, therefore, according to my opinion, the labour court was right in refusing back wages for the intervening period.

I have perused the entire award of the labour court. I have also considered the observations made by the labour court. The reference has remained pending before the labour court for a long period, presumption is found to be correct because of the fact that a person cannot remain without work for such a long period. In view of these observations made by the labour court, according to my opinion, the labour court has passed legal and valid order and has not committed any error either in refusing back wages to one of the workman or in granting only compensation to the heirs of the deceased workman Govind Bhikha. No jurisdictional error and/or procedural irregularity has been pointed out by either of the advocates and, therefore, the award does not require any interference of this Court in exercise of the powers under Article 226 and/or 227 of the Constitution of India.

It is also required to be noted that in all, the workmen have worked for a period of more than six years but the record shows that the workmen were employed from 1978 as daily wagers in the employment of the employer. Considering these facts and considering that the employer is a public body, and also considering the pendency of the matter before the labour court from 1984 to 1998, according to my opinion, the termination has been held to be illegal on technical breach of non compliance of section 25-F of the Industrial Disputes Act and in such circumstances, granting of back wages would amount to burdening a public body for such a long period. Therefore, according to my opinion, labour court was right in passing the impugned award and same does not require any interference by this Court in exercise of the powers under Article 226 and/or 227 of the Constitution of India.

I have also considered one aspect of the matter that one of the workman has died during the pendency of proceedings before the labour court and, therefore, the labour court, considering this aspect, has awarded only compensation to the heirs and legal representatives of the deceased workman in lieu of reinstatement considering the length of service put in by the deceased workman. Such an award made by the labour court is legal, valid and same does not require interference of this Court and, therefore, there is no substance in these and are therefore required to be dismissed.

In the result, these petitions are dismissed. Rule is discharged in each of the petitions. Interim relief,if any, shall stand vacated with no order as to costs.

At this stage, learned advocate Mr. Mehta has submitted that though the award was made by the labour court on 10th December, 1998, the workman concerned has not been reinstated till this date by the employer and, therefore, he has prayed for issuing some suitable directions to the employer to reinstate the workman concerned in terms of the directions of the labour court given under the impugned award within some reasonable period and to pay the amount of compensation of Rs.10,000/- to the heirs and legal representatives of the deceased workman Govind Bhikha within some reasonable period.

Considering the request made by Mr. Mehta, it is directed to the employer Gujarat Maritime Board to reinstate the workman Narshi Tapu with effect from 11th

December, 1998 in terms of the award made by the labour court within one month from the date of receipt of copy of this order on the work available with the employer in the district of Jamnagar. It is further directed to the employer Board to pay full wages to the said workman from the date of the award 11th December, 1998 till the date of his actual reinstatement within two months from the date of receipt of copy of this order. It is further directed to the employer Board to pay an amount of Rs.10,000/- as directed by the labour court towards the compensation to the heirs and legal representatives of the deceased workman Govind Bhikha by account payee cheque within one month from the date of receipt of copy of this order.

Dt.21.3.2002. (H.K. Rathod,J.)